



POLICE DEPARTMENT CITY OF NEW YORK

May 30, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer John Panik
Tax Registry No. 955292
Patrol Borough Staten Island
Disciplinary Case No. 2016-16666

Charges and Specifications:

1. Police Officer John Panik, on or about June 19, 2016, at approximately 0155 hours, while assigned to PBSI and on duty, in the vicinity of Staten Island Ferry, Richmond County, wrongfully used force, in that he punched Darnell Brailsford in or about his face, without police necessity.

P.G. 203-11 - USE OF FORCE

Appearances:

For CCRB-APU: Suzanne O'Hare, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, NY 10038

Hearing Date:

April 4, 2017

Decision:

Not Guilty

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 4, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called Darnell Brailsford as a witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The following is a summary of the facts which are not in dispute in this case. On June 19, 2016, at approximately 0130 hours, Darnell Brailsford embarked on a Manhattan-bound Staten Island Ferry from the St. George Terminal on Staten Island (T. 20, 73). Brailsford had spent the afternoon and evening of June 18th at a barbecue hosted by relatives on Staten Island (T. 18). As Brailsford made his way to the passenger compartment, Respondent and his partner, assigned to anti-terrorism duty on board the ferry, noticed that Brailsford was talking to himself and appeared inebriated (T. 73-74).

When the ferry reached the Whitehall Terminal in Manhattan, Respondent and his partner conducted a patrol of the passenger compartment to ensure all passengers who had embarked in Staten Island disembarked in Manhattan. At approximately 0150 hours, Respondent observed Brailsford rise from a seated position on a bench, then fall to the floor (T. 75; CCRB Ex. 4, #0857, 1:55:28-1:55:51). When Respondent walked over to Brailsford and offered assistance, Brailsford answered, "I don't need no help from no f—ng NYPD cops; f—k you, I don't need

your help” (*Id.*). Respondent then asked Brailsford if he wanted an ambulance or a wheelchair, to which Brailsford replied, “F—k you” (T. 76). Respondent detected the scent of alcohol emanating from Brailsford’s person (T. 79). Brailsford eventually stood up and began walking toward the exit with an unsteady gait. Brailsford fell to the floor again on his way to a staircase leading to the exit (T. 77; CCRB Ex. 4, #0857, 1:56:59-1:58:45). Respondent again approached Brailsford and asked if he needed assistance or medical attention; Brailsford refused Respondent’s offers, stated that he would punch Respondent in the face, and then proceeded down the staircase (T. 77-78, 79; CCRB Ex. 4, #0857, 1:58:52-2:00:01).

Brailsford descended the staircase and proceeded a short distance along the ramp leading to the ferry landing before he stopped and grasped the railing (T. 80; CCRB Ex. 4, #0857, 2:00:01-2:01:54). Respondent encouraged Brailsford to keep moving to complete the exit process, but Brailsford responded with yet another epithet and declared that he would “get off the f—ng boat when I f—ng want to get off the boat” (*Id.*). As Respondent approached Brailsford, he suddenly stood erect, walked toward Respondent and stated that he was going to punch him in his face (T. 81). Respondent took a step back, then Brailsford removed his cap and flung it at Respondent’s face from a distance of approximately two feet (*Id.*). Respondent was struck in his forehead by the visor of Brailsford’s cap (*Id.*). Respondent raised his left hand in a defensive posture, then punched Brailsford once in his face (T. 81-82). Brailsford collapsed to the ground and was handcuffed (T. 83, 84; CCRB Ex. 4, #0857, 2:01:54-2:03:00).

Respondent and his partner took Brailsford back onto the ferry and transported him to the St. George terminal in custody (T. 85; CCRB Ex. 4, #0857, 2:06:27-2:06:58). Respondent wiped the blood from Brailsford’s face as they were in transit (T. 86; CCRB Ex. 1, 2, 3, 5; CCRB Ex. 4, #0857, 2:08:00-2:08:21). At the St. George terminal, Brailsford was placed in an

ambulance and taken to [REDACTED] where he was treated for a facial fracture (T. 86-87; CCRB Ex. 5). After he had been released from the hospital, Brailsford was taken to the 120th Precinct for arrest processing, where he was charged with harassment, disorderly conduct and obstructing governmental administration (T. 87-88).

At issue, in this case, is whether Respondent punched Brailsford without police necessity. The incident involving Brailsford and Respondent was captured in a video recording, entered into evidence as CCRB Exhibit 4. Since the video recording does not have an audio portion, my findings of fact regarding the particulars of the confrontation flow from my credibility findings. As set forth below, I find Respondent's testimony regarding the nature of the interaction between Brailsford and himself to be credible.

Respondent testified that he approached Brailsford on the apron located at the Whitehall landing when he grasped a railing and declared, in sum and substance that he would move when he was ready (T. 80). Respondent thought, based on his observation of Brailsford's demeanor, his language and the odor of alcohol coming from his body, that Brailsford was inebriated (*Id.*). According to Respondent, Brailsford became more agitated and more belligerent during his interaction with him (T. 80-81). When Brailsford threw his cap in Respondent's face, Respondent believed that Brailsford would follow-up with a punch, as he had been saying he would (T. 81-82).

I find Respondent's testimony credible, as it was logical and consistent with other evidence in the record, particularly the video recording of the incident (CCRB Exhibit 4). Although Respondent is an interested witness in this proceeding, his testimony was forthright and bore the ring of truth. Respondent's credibility was further buttressed by his prompt reporting of the use of force to his Sergeant after Brailsford's arrest.

I find Brailsford to be an incredible witness, except to the extent that he conceded he had no independent recollection of the events of that evening other than being arrested and taken to a hospital (T. 31-32, 63-64). Brailsford conceded, under oath, that he made factual assertions in an affidavit commencing his civil action against the City of New York, as well as in an examination before trial in the same case, which were not based on his recollection of the events. This admission unequivocally established Brailsford's bias and rendered his testimony wholly unreliable (T. 32-35, 41-44). In light of this finding, Brailsford's apparent concessions that he consumed various drugs and alcohol that day were likely a self-serving attempt to minimize his actual consumption (T. 18-19, 48-49, 65, 66-67).

Patrol Guide Procedure 203-11 (August 1, 2013) limits the use of force by police officers to that which is necessary to overcome resistance. Based upon the credible, relevant evidence in the record, I find that CCRB has not met their burden of proving by a preponderance of the evidence that Respondent wrongfully used force by striking Brailsford without police necessity.

The credible evidence in the record, both testimonial and demonstrative, supports a finding that Brailsford displayed the common indicia of intoxication at the time he attempted to disembark from the ferry (*People v. Tieman*, 112 A.D.3d 975, 976 [2d Dept. 2013] citing *People v. Blajeski*, 125 A.D.2d 582, 582-583 [2d Dept. 1986]). CCRB Exhibit 4 shows several views where Brailsford is seen falling to the ground inexplicably, as well as swaying with an unsteady gait. Respondent credibly described smelling the scent of alcohol on Brailsford's breath, as well as being the target of several barrages of unprovoked invective from him. Brailsford conceded in his testimony that during the day on June 19th, he consumed two to three cups of cognac, perhaps one marihuana cigarette and one 10 mg dosage of Percocet¹. Brailsford further conceded that he

¹ I take judicial notice that Percocet is the trade name for a drug combining acetaminophen and oxycodone which is usually prescribed for moderate to severe pain. Oxycodone is a Schedule II narcotic.

had been on a thrice-daily regimen of Percocet since 2013. This tribunal does not require expert testimony to infer, based on the video evidence, as well as Brailsford's admissions, that he was likely in a drug and alcohol-induced state of inebriation at the time he encountered Respondent.

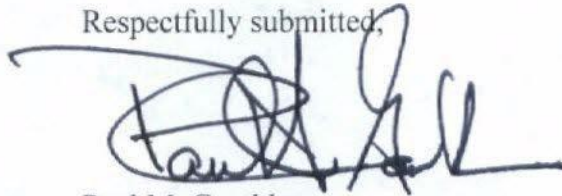
As CCRB Exhibit 4 demonstrates incontrovertibly, Brailsford took his hat off his head and struck Respondent in the face with it. Respondent testified that the brim of the hat struck him squarely in his forehead. I take judicial notice that the type of hat worn by Brailsford that night, commonly known as a "snap back," has a stiffened brim to maintain a flat, as opposed to curved, visor. I find it reasonable that being struck with the stiffened visor of Brailsford's cap, from an arm's length away, would be sufficient to startle and temporarily stun a person in Respondent's position. I further find it reasonable in light of Respondent's aggressive speech and confrontational posture for Respondent to suspect that the strike with the hat was the precursor of a punch to follow. Respondent testified that he believed a punch, in that context, was a minimal use of force.

Under these circumstances, I find that Respondent's use of a single, albeit potent, punch was reasonable. While it is true that police officers must display equanimity in the face of verbal provocation, once the taunting escalates to physical contact, they are authorized to meet such threat with minimal force sufficient to overcome the threat presented.

APPROVED

OCT 16 2017
James P. O'Neill
JAMES P. O'NEILL
POLICE COMMISSIONER

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials